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Supreme Court of the United States.

October Term, 1890. No. 8, Original.

IN THE MATTER OF THE

Washington and Georgetown Railroad Company.

MANDAMUS.

BRIEF FOR PETITIONER.

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Supreme Court of the United States.

OCTOBER TERM, 1890.

In the matter of the WASHINGTON AND GEORGETOWN RAILROAD COMPANY, *Petitioner.*

BRIEF FOR PETITIONER.

THE CASE.

The Court below in special term in an action of tort rendered, upon the verdict of a jury, the following judgment:

> "Thereupon, it is considered that the plaintiff recover against said defendant six thousand one hundred and ninety-five dollars for his damages, in manner and form as aforesaid assessed, and $ for his costs of suit, and have execution thereof." (R., 3).

This judgment was, in general term, "affirmed with costs," (R., 4) and the judgment in general term being brought here by writ of error, was by this Court "affirmed with costs." (R., 9).

Neither the judgment in special term, nor general term, nor of this Court, gave interest in terms. When the mandate of this Court was filed in the

court below in general term, that court, instead of proceeding to execute the judgment of this Court, according to its terms, directed, on the motion of the plaintiff, that execution issue not only for the amount of the judgment and costs, but also *for the interest upon that amount from the date of the original judgment in special term*, thus varying and adding to the terms of the judgment. To correct this interference by the court below with the final adjudication by this Court of the rights of the parties to the cause, the defendants moved for a writ of *mandamus*, and, a rule to show cause having been granted, the court below filed its return. The return admits that the order for the payment of interest as above stated was made, and then, referring to the words of the mandate commanding "*that such execution and proceedings* be had in said cause as according to right and justice and the laws of the United States, ought to be had," alleges that the order was made by the Court because it "*believed such order was in accordance with right and justice and the laws of the United States.*"

The reasons of the court below for making the order are set forth in the opinion of the Court delivered when the motion to give interest was granted, and the opinion is made part of the return.

It will be found that the opinion is devoted exclusively to the question whether judgments in action of tort, by the law of this District, carry interest, and the conclusion is reached that they carry interest by operation of law, and even when on their face they are silent as to interest.

There is not even an attempt to show that the judgments of this court carry interest where this court

has not in the exercise of the discretion confided to it by law so declared. Neither is there an attempt to show by what right or warrant the court below, commanded by the mandate to execute the judgment of this court, undertook to revise and correct it.

POINTS AND AUTHORITIES.

1. The order of the court below was in plain violation of the judgment and mandate of this court.

The judgment in special term affirmed by the judgment in general term, and the latter judgment affirmed here, the terms of the original became the terms of the judgment of this court. These terms are as fixed and certain as words can make them. They declare with absolute certainty what shall be recovered, that is, a specific sum of money and costs. They are silent as to the recovery of any interest, whatever. It is hardly possible to conceive of a more simple judicial act than that of this Court. It left nothing to implication or even to construction. It had only to be read to be understood.

As the judgment was perfectly plain, so was the duty of the court below. The mandate left nothing to its judgment or discretion, but merely directed it to carry into execution what had been in unmistakable terms adjudged by this Court. The duty of the court below thus plain, how was it discharged? It cannot be contended that it proceeded to discharge its duty according to the terms of the judgment of this Court. On the contrary, it has added to these terms by interpolating the right to recover interest when no such right was adjudicated by the judgment. It has, in other words, rendered a *new judg-*

ment instead of executing the judgment which was certified to it for execution, and for no other purpose.

The fundamental error of the court below consisted in its failure to recognize the relation it bore to the judgment of this Court. That judgment concluded the rights of the parties to the suit as to all matters involved. What was given by it was inexorably awarded, and what was not given was necessarily denied. It was absolutely binding upon all courts and especially the court charged with its execution. Neither error of commission or omission could be predicated of it in a legal sense. It was, in short, the end of controversy.

The opinion of the court below will be found to relate, first, to the propriety of awarding interest in error and, secondly, to the proposition that judgments in tort by the law of this District carry interest. Both these subjects are discussed at great length. But what avails discussion when the judgment of this Court did not in fact award interest? That judgment is a bar to all discussion.

The question of interest was, with all other questions involved in the cause, finally disposed of by the judgment.

By the 23rd section of the Judiciary Act the subject of "just damages for delay" in error including interest, is, in all cases, confided to the discretion of this Court, and the jurisdiction thus conferred has been regulated and reduced to system by various rules promulgated from time to time.

This jurisdiction covers the whole subject of interest, so that whatever interest a judgment or decree

may carry, when it is brought here for review, the question of interest belongs exclusively to this Court.

Thus, when, by the act of 1842, judgments of Federal Courts were made to bear interest according to the law of the State where the court was held, and a judgment rendered in New York after the passage of the act was brought here and affirmed, this Court held that the act did not repeal the 23rd section of the Judiciary Act, and that the interest chargeable depended not upon the act but the discretion of this Court, and the rate of interest, as fixed by the rules at that time not exceeding six per cent., refused to allow the higher rate of seven per cent. allowed by the law of New York.

Mitchell vs. *Harmony*, 13 How., 115, 149 ;
Perkins vs. *Fourniquet*, 14 How., 328, 331.

Thus the question before the court below, which granted the order was not whether by the local law the judgment in tort bore interest, but whether interest had been awarded by this Court, to which the question of interest exclusively belonged.

It has been said above that what was not awarded by the judgment of this Court was denied.

In the case of *Boyce* vs. *Grundy*, 9 Pet., 275, a circuit court in the execution of a mandate of this Court had done in a chancery suit the identical thing done by the court below in an action of tort, that is, *allowed interest* on an amount decreed by this court to be due. Judge Story, delivering the opinion of the court says, p. 289:

"Another objection to the decree is, that it

decrees the sum of four hundred and ninety-six dollars and forty-six cents, as it is understood, (though not so stated in the decree), as interest upon the original sum decreed in the Circuit Court, viz., two thousand and sixty-five dollars and twenty-eight cents in 1826, from the time of the rendition thereof to the affirmance in the Supreme Court, in January Term, 1830. We are of opinion that there is error, also, in this part of the decree. By the Judiciary Act of 1789, ch. 20, s. 23, the Supreme Court is authorized, in cases of affirmance of any judgment or decree, to award to the respondent just damages for his delay. And by the rules of the Supreme Court, made in February Term, 1803, and February Term, 1807, in cases where the suit is for mere delay, damages are to be awarded at the rate of ten per centum per annum on the amount of the judgment, to the time of the affirmance thereof. And in cases where there is a real controversy, the damages are to be at the rate of six per cent. per annum only. And in both cases the interest is to be computed as part of the damages. It is, therefore, *solely for the decision* of the Supreme Court, *whether any damages or interest* (as a part thereof), are to be allowed or not in cases of affirmance. If upon the affirmance *no allowance of interest or damages is made*, it is *equivalent to a denial* of *any interest* or *damages*; and the Circuit Court, in carrying into effect the decree of affirmance, *cannot enlarge* the amount thereby decreed; but is limited to the mere execution of the decree *in the terms in which it is expressed.* A decree of the Circuit Court allowing interest in such a case, *is to all intents and purposes, quad hoc, a new decree, extending the former decree.*"

It is a remarkable fact, that by the opinion the judgment of this Court is as completely ignored as if it had never been rendered.

The reasons assigned are such, whether good or bad, as might be assigned by the Court if called upon to execute its own judgment, but are out of place in the discharge of the duty imposed by the mandate of enforcing the judgment of this Court.

II. By the law of this District, a judgment in an action of tort does not carry interest.

1. Under the repeated decisions of this court, this question is not open for argument.

The case of *Railroad Co.* vs. *Trook*, 100 U. S. (1879.)

This was a motion to dismiss for want of jurisdiction, because the matter in dispute did not exceed $2,500. The facts were, Trook recovered in an action of tort a judgment for $4,000. On motion for a new trial on exceptions, the case went to the General Term. There he entered a remittitur for $1,500, and the judgment was then affirmed, but *generally*, as the transcript of the record in this court will show, and not for the specific sum of $2,500. This Court dismissed the writ of error because the matter in dispute did not exceed $2,500.

It is plain that the jurisdiction of this Court depended on the matter in dispute when the judgment of the Court in General Term was rendered, including interest already accrued, but excluding costs and interest thereafter to accrue. Hence, if the original judgment carried interest by force of law, as here contended, the matter in dispute in general term was the principal and the interest accrued, and after deducting the remittitur there was enough left to sustain the jurisdiction of this Court.

In *N. Y. Elevated Railroad* vs. *Fifth National Bank*, 118 U. S., 608, there was a verdict for $5,000, which carried interest. A motion for a new trial delayed judgment, and when judgment was entered it was for $5,068.33, being for the verdict and accrued interest. On motion to dismiss here, it was held that the matter in dispute exceeded $5,000. And on authority of this case the same ruling was repeated in *Quebec Steamship Co.* vs. *Merchant*, 133 U. S., 375.

The only conceivable difference between this case and that of Trook is, that in the former the accrued interest was expressed on the face of the judgment, and in the latter, not. But, if interest was a legal incident, as maintained by the court below, it was as much a part of the judgment as if expressed in words. "In such cases," says Ch. J. Taney, in *Perkins* vs. *Fourniquet*, 14 How., 331, "the judgment bears interest by force of the law, although upon the face of it it may not purport to carry interest." And if it be conceded that interest attached by law to the judgment in special term should be expressed upon its face, then there would not be in the present case any shadow of excuse, even from the standpoint of the court below, for adding to the mandate which is silent upon the subject of interest.

It thus appears that this Court, in the Trook case, was confronted with the question whether the original judgment bore interest or not. If it did, the matter in issue at the date of the judgment brought here by the writ of error, exceeded the jurisdictional sum, and this Court had jurisdiction. If the judgment did not bear interest there was no jurisdiction, and when this Court dismissed the writ for want of

jurisdiction, it necessarily decided that a judgment in tort did not carry interest.

The matter in dispute depended on the matter litigated in general term and not at the circuit, for the writ of error brought here for review the judgment of the Court in general term and, if at the date of that judgment interest had accrued by force of law, and as a necessity incident to the original judgment, then this Court had jurisdiction.

Zeckendorf vs. *Johnson*, 123 U. S. 617;
The Patapsco, 12 Wal., 451;
The Rio Grande, 19 Wal., 178;
Railroad Co. vs. *Trook*, and
N. Y. Elevated Railroad vs. *Fifth National Bank*, *supra*.

The next case is the *District* vs. *Gannon*, 130 U. S. 227 (1889). This case was identical in principle with that of Trook. The facts were: a judgment in tort at the circuit for $5,000, followed by a judgment of affirmance in General Term and a writ of error to the latter which writ was dismissed by this court for the want of jurisdiction, because the matter in dispute did not exceed the jurisdictional amount which had been since the Trook case increased to $5,000.

Following the above case and decided within a year after (March 3, 1890,) is the case of *Keller* vs. *Ashford*, 133 U. S. 610. This was a case of contract. The bill of the appellant was dismissed at special term and the decree affirmed in general term. The matter in dispute in the latter was with interest accrued before the affirmance largely in excess of the

jurisdictional amount. A motion was made to dismiss, for the want of jurisdiction, and the Trook and Gannon cases were relied on in its support. Mr. Justice GRAY delivered the opinion of the Court and in the course of it said:

> "In a suit founded upon a contract, the sum in dispute at the time of the judgment or decree appealed from, including any interest then accrued, is the test of appellate jurisdiction. *Bank of United States* vs. *Daniel*, 12 Pet., 32, 52; *The Patapsco*, 12 Wal. 451; *New York Elevated Railroad* vs. *Fifth National Bank*, 118 U. S. 608; *Zeckendorf* vs. *Johnson*, 123 U. S., 617. By the express terms of the promissory note sued on this case, it bore interest at the rate of eight per cent. yearly from its date until paid. Computing interest accordingly, the sum in dispute was much more than $2,500 at the time of the decree in general term, which was the decree from which this appeal was taken. In *Railroad Co.* vs. *Trook*, 100 U. S. 112, cited for the appellees, as in *District of Columbia* vs. *Gannon*, 130 U. S. 227, the judgment in special term was for damages in an action sounding in tort, which bore no interest, either by the general law, or by the judgment of affirmance in general term."

Here, then, are three decisions of this court directly in point, two rendered in cases of tort, and the third in a case of contract.

The court below says, in its opinion, that there is nothing in the first two cases to indicate that this Court based its decision upon the character of the action. But this Court does base its decision in terms in each case upon the fact that the judgment did not carry interest. It says, in both

cases, that the value in dispute was to be determined "by the *judgment affirmed* without adding interest or costs," plainly referring to interest to accrue after the judgment in general term; and it further says, in terms, that the judgment of affirmance in the Trook case was for $2,500 *only*, and in the Gannon case for $5,000 *only*. This Court could not have used such language if it had not held that the judgments affirmed did not bear interest. If the original judgments had carried interest by force of law each case would have been brought directly under the ruling of this Court in *Amis* vs. *Smith*, 16 Pet., 311, and in *Perkins* vs. *Fourniquet*, 14 How., 331, and in each case the affirmance would have been for an amount sufficient to give jurisdiction to this Court. It is to be observed that in each case the judgment of affirmance was *general* and not for a specific sum.

In the Gannon case Mr. Chief Justice FULLER, who delivered the opinion of the Court, says: "This result," jurisdiction, "would have followed here, if, by the judgment of affirmance, interest had been directed to be added to the judgment at special term. As it is, however, the judgment falls below the amount necessary to give us jurisdiction." In the preceding sentence he had shown that interest already accrued, and hence part of the claim litigated in general term would give jurisdiction, and holding there was no such interest accrued he proceeds to show, by the passage above quoted, how by the act of the court in general term the jurisdictional sum might have been produced. What is this but saying that the judgment affirmed, bearing no interest by force of law, bore none by the act of the Court?

The court below, after quoting the above passage, thinks it quite inconsistent with "the intimation" in the opinion delivered by Mr. Justice GRAY in *Keller* vs. *Ashford*, that judgments for damages sounding in tort bear no interest "by the general law." But the court fails to indicate any inconsistency, and that there is none is perfectly plain. A judgment may not bear interest "by the general law," and yet it is entirely competent for an appellate tribunal in its discretion to give damages for delay, including interest. Such is the power exercised by this Court under the Act of 1789, Rule 23. And the court below has the same power, R. S. D. C. 770, and has exercised it. Rule Supreme Court, D. C., 905 (6.)

The attention of this Court is called to the fact that, in both the Trook and Gannon cases the subject discussed by counsel, as their briefs show, was whether the original judgments bore interest, and that to sustain the affirmative of the proposition every substantial point discussed in the opinion of the court below, was made and persistently pressed.

But if, after the Trook and Gannon cases, any doubt could exist, it was completely dissipated by the opinion of this Court in Keller *vs.* Ashford.

The Court below, acknowledging the conclusiveness of this opinion, seeks to avoid it by an attempt to show that this Court did not intend what it said and, if it did, that its ruling was a mere *obiter dictum*. As to the ~~former~~ objection that the ruling was *obiter*, it is to be observed that the argument to support the motion to dismiss was that interest accruing to the date of the ffirmance in general term did not enter

into the matter in dispute in that court, and in support of that argument the Trook and Gannon cases were relied on. In other words it was contended that these cases established a rule applicable to all cases whether founded in contract or tort. The contention was without any foundation, it is true, but it was made, and, *if sound, disposed of the case on the ground of jurisdiction.* It thus became necessary for this Court to examine the point, and it did so, and defined exactly what was decided by the Trook and Gannon cases, that these cases did turn upon the character of the action and the judgment being in actions of tort did not carry interest.

The decision in *Keller* vs. *Ashford* was, therefore, that of a court required, in the determination of the important question of jurisdiction, to review and defend its own previous rulings, and involved "the application of the judicial mind to the precise question necessary to be determined to fix the rights of the parties." (Judge Curtis, 18 How., 287.) Such a decision is just the opposite to an *obiter dictum.*

Indeed, the position taken by the court below that the Trook and Gannon decisions did not involve the character of the action, is precisely that taken by counsel in *Keller* vs. *Ashford*, with this difference, however, that the former is taken after this Court has reiterated and defined those decisions.

2. Whilst it is manifest that the question, whether judgments in actions of tort bear interest is not an open one, proper deference to the court below requires an examination of the grounds relied on.

All must concede that, at common law, judgments,

whatever the cause of action, did not bear interest. And the same was the case with decrees in equity.

Perkins vs. *Fourniquet*, 14 How., 331, 332.

By the common law in force in Maryland at the cession of this District, interest was recoverable as of right in comparatively few cases of contract, such as contracts in writing for the payment of money—as bills of exchange and promissory notes—and contracts, express or implied for the payment of interest, and where the money claimed had been actually used, and upon bonds (by statute)—but in all other cases of contracts and in all cases of tort, the question of interest belonged exclusively to the jury, to be decided according to the equeities of the transaction.

Newson vs *Douglass*, 7 H. and J., 417, 453,
Curtis vs. *Gibney*, 59 Md., 156;
Frank vs. *Morrison*, 55 Md., 408;
Railway Co. vs. *Sewell*, 37 Md., 443, 452, 455.
Dennison vs. *Lee*, 6 G. and J., 385;
Fridge vs. *State*, 39 G. and J., 117;
Hammond vs. *Hammond*, 2 Bland., 367-371.

And whether the interest was a legal right or to be allowed in the discretion of a jury, *the judgment did not in any form bear interest*, with few exceptions. These exceptions did not embrace judgments in actions of tort, and are stated by Chancellor Bland in *Hammond* vs. *Hammond*, 2 Bland., 370, as follows:

"It has been declared by an Act of Assembly that, in all actions brought for the penalty of

> any bond or contract, the jury may, under the direction of the court, upon the plea of payment or performance, find what sum of money is really due to the plaintiff; upon which judgment shall be entered for the penalty to be released upon the payment of the sum so found due, and interest on the same until paid and costs. (1785 ch. 80, s. 13). So that, under this Act, the plaintiff may, as in an action of debt upon a judgment, recover further interest, except on the costs, upon the aggregate amount of his judgment, and have his execution thereon levied accordingly. As for example, if the debt really due was $100, with $30 interest, the jury would be directed to find a verdict for $130, upon which judgment would be entered with interest on the same from the day of signing the judgment until paid. (2 Harris' Ent., 192). It has also become usual, in the courts of common law, in action of debt, assumpsit, &c., where the defendant confessed judgment, to enter it for the amount claimed in the declaration, with a memorandum at the foot of the judgment, that it should be released on the payment of the whole sum then due, with interest thereon from that day until paid, and costs of suit. (2 Harris' Ent., 87, 97). After which it was enacted, that all judgments by default, and in all cases where a verdict should be given, the judgment thereon should carry interest in the same manner as in cases of a confession of judgment." (1809 ch. 153, s. 4; 1811 ch. 161, s. 5; *Hawkins* vs. *Jackson*, 6 H. & J., 151.)

In *Railway Co.* vs. *Sewell*, an action of tort, the Court of Appeals says, p. 455:

> "It is established, by the authorities cited by the appellants that judgments, in this State did not carry interest, but were made to do so by comparatively recent acts of the Assembly. Chief Justice TANEY, in the case of *Perkins* vs. *Four-*

> *niquet*, 14 How., 331, says: 'Upon common law principles a judgment does not carry interest.' Vide also *Preston's Ad'mrs* vs. *West*, 4 H. and McHy., 70; Harris' Entrs., 89, 149; Acts of 1802, ch. 101, 1809, ch. 153."

The case of *Preston* vs. *West*, referred to in the above quotation, was an action of debt on a single bill. Judgment was rendered for debt "*with accruing interest* and costs." The general court, on writ of error, reversed the judgment. This case was decided in 1797, before the cession of this district.

In *Railway* vs. *Sewell*, the court, after the Maryland legislature had made all judgments carry interest, entered judgment in an action of tort with interest *from the date of the verdict*, (p. 451.) On appeal the judgment was reversed on the ground that the *verdict* did not carry interest.

Thus stood the common law in force in Maryland at the date of the cession of this District. In that State the common law was changed by several acts of Assembly, 1802, ch. 101; 1802, ch. 153; and 1811, ch. 161 (mainly the last two,)all of which were passed after the cession of this District.

The act of 1809, is as follows:

> "That in all cases where a verdict shall be given in any court of this State, the court before whom such verdict shall be given shall, and they are hereby authorized to, enter such judgment upon the verdict as will carry an interest on the same until the damages assessed by the jury giving such verdict, in the same manner as is now used and practiced in the cases of confession of judgment in said court."

1 Dorsey's Laws of Maryland, 590.

The act of 1811 extended the above law to judgments by *default*. (Id., 605.)

This legislation led to a change in the form of entering judgments. Before these laws judgments were entered for the real debt. If interest was a legal incident or was found by the jury, it was computed to the date of the judgment, and the judgment was entered for the gross amount; but such judgment bore no interest. This will be seen by reference to 2 Harris' Entries, pp. 89, 149, published in 1801.

After the above laws, judgments were entered for the *ad damnum* in the declaration, with a memorandum that the judgment should be released on payment of the real debt and interest.

Evans' Practice, 338;
2 Evans' Harris, 344, 352.

This change was, doubtless, in conformity with the practice in some of the exceptional cases mentioned by Chancellor Bland, and also to avoid the appearance of ~~confounding~~ compounding the interest.

The provisions of the above laws were subsequently, with a further provision as to the form of entry, condensed in the Code of Maryland, thus:

> "All judgments by confession, on verdict or by default, shall be so entered as to carry interest from the time they were entered."
>
> Code of Maryland, (1878) p. 617, art., 64, s. 124;
> *Railway* vs. *Sewell*, p. 456.

Such was the change in the common law in Maryland, by legislation; and it is conceded that the change embraced all judgments, whatever the character of the causes of action.

As, however, legislation was necessary in Maryland to repeal the common law, so it could only be repealed in this District after the cession by act of Congress.

And, to effect such repeal, it is a canon of interpretation that the repealing statute must be plain and unambiguous, There can be no repeal by argument or inference or implication, nor, except when there is such positive repugnancy between the new law and the old law that they cannot stand together or be consistently reconciled.

Before referring to the legislative acts relied on as repealing the common law, a word as to the earliest act of legislation by Congress, that is, the act of 1812, ch., 106, 2 Stat., at L. 755, S., 829 R. S. D. C.

The provision is as follows:

> "Upon all judgments rendered on the common-law side of the court in actions *founded on contracts*, interest at the rate of six per centum per annum shall be awarded on the *principle sum* due until the judgment shall be satisfied, and the *amount* which is to bear interest and the *time* from which it is to be paid, shall be *ascertained by the verdict of the jury* sworn in the cause."

It is only necessary to read, with proper care, the enactment, to see that the legislative intent was confined exclusively to *actions founded on contract.* Attention has already been directed to the fact that, at common law only, some of many causes of action founded on contract carried interest as matter of right; the interest in the bulk of them depending on the discretion of the jury, and that, with few exceptions,

in cases of contract no judgment in any form carried interest. This was remedied by the above law, and thereafter every suitor, having a cause of action founded in contract, was entitled to interest upon what was found to be due.

The discrimination between contract and tort is drawn most sharply and decisively.

Next, the statute declared that, whilst in "actions founded on contracts" interest was to be allowed on "the principal sum due," until satisfaction, both such principal sum or, in other words, "*the amount which is to bear interest*" and the time from which interest was to run, should be ascertained by the verdict of the jury sworn in the cause. It thus appears that the interest was to be awarded not upon the *judgment* but "*the principal sum due*," and that *such sum* and the *time* from which interest was to be computed were to be found by the jury. This is very far from awarding interest as a a legal right upon the judgment, even in actions founded in contract. The court could not compute interest upon the principal sum up to the day of signing judgment, and then render a judgment for the gross amount, principal and interest, which judgment should bear interest.

The adminstration of this law by the late Circuit Court was in exact conformity with its provisions. The form of entering the judgment, which at the passage of the act of Congress prevailed in Maryland under the above legislation of that State, was adopted in this District. But torts bore no interest in any form, and any interest which the jury might, in their discretion give, necessarily ceased with the verdict.

After the Court below was created, the form of entering judgments was by rule of court changed, and they were entered for the real debt instead of the damages claimed in the declaration with a memoradum of release. But the rules of the Court recognized the distinction between cases of contract and tort, and also the requirements of the above acts as to the finding of a jury, as will be seen hereafter.

It being conceded by the opinion that by the common law no judgment bore interest, and the act of 1812 being confined expressly to actions founded in contract, the question recurs, when and how was the common law repealed? It is said it was repealed by the act of 1842 and, if not by that statute, certainly by the act of 1870. No other source of repeal is intimated by the opinion, and both these sources were before this Court and doubtless considered by it in the Trook and Gannon cases.

The act of 1842; R. S. U. S. s. 966.

This law relates exclusively to the *Circuit* and *District courts* of the United States. No one will assert that the court below is either a circuit or a district court. It is thus plainly not within the terms of the law. Neither is it within the *purpose* of the law which was to bring about uniformity between the Federal and State tribunals in respect of the subject of judicial interest. The law says that interest shall be allowed and levied by the designated Federal courts as allowed and levied by *the State law*. The predicate of both allowance and levy is the State law. Such a provision is utterly inapplicable to this District.

In *Page* vs. *Burnstine*, 10 U. S., 667, this Court

had occasion to consider what laws of the United States were "locally inapplicable" to this District. Certainly, a law relating to designated tribunals operating in geographical areas distinct from this District is within that category.

It is difficult to imagine the confusion that would ensue from the application to this District of the mass of legislation relating specially to Circuit and District Courts of the United States.

As to the mandates referred to in the opinion, and issued before the law had been settled by this Court, it is enough to say that manifest clerical misprisions hardly afford ground for the repeal of the common law.

The intention of this Court to give interest was clear, though informally expressed.

The Act of 1870, R. S., D. C., s. 713.

This law is mainly relied on as repealing the common law. It also was before this Court and duly considered in the Trook and Gannon cases. It was the main ground upon which the motion to dismiss was, in each case, unsuccessfully opposed.

The provision relied on is found in a statute, the purpose of which was to allow parties to contract, in writing, for a higher rate of interest than was allowed by the existing law. The title of the act is "An act to amend the *usury laws* of the District of Columbia."

The subject was undoubtedly important and delicate, but that subject, as shown by the title and the law itself, is *the change in the usury laws* by providing that, under the prescribed conditions, ~~certain~~ parties might contract for a rate of interest different

from the established rates. Such is the whole scope of the law.

The first section enacts : 16 Stat. 91.

> "That the *rate of interest* upon judgments or decrees, and upon the loan or forbearance of any money, goods, or things in action, shall continue to be six dollars upon one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time, except as provided hereinafter."~~in this chapter.~~"

Two things must be perfectly apparent from this provision: First, that the legislative mind was directed solely to the *rate of interest*, and that the existing rate of interest was to *continue* in all respects except as provided for by the subsequent sections. Thus, the only change recognized by the law is such change as to the rate of interest as can be found in those sections.

Thus, when the legislature *ex abundanti cautela* in the outset declared that judicial interest and all other interest should continue as before, save so far as power to change was given by the subsequent sections, it is seriously argued that because judgments and decrees are mentioned generally as existing subjects of interest, therefore, *all judgments and decrees must, in the future,* ~~*shall*~~ *bear interest*, notwithstanding the statute says, in plain words, that there shall be no change except as provided by the subsequent sections—that is, except in cases of contract in writing. Can there be a greater fallacy? There is nothing in the statute to indicate, in the remotest manner, that the legislature intended to regulate what should be the *subjects of interest*. All that was to

remain as before, and the only purpose was to give parties the power to change, under prescribed conditions, the existing rate of interest.

The statute looks to the maintenance of what *was*, so far as not changed by the subsequent sections. The word is "continue." The argument in the opinion is, that what *was* so far from *continuing* was to be radically changed, and not by those sections.

Perhaps the last thing to be done in the interpretation of a statute is to impute ignorance to the legislative body enacting it. And yet that is just what is done in the opinion.

All must agree that when the statute was passed a judgment even in cases founded in contract did not bear interest unless so entered. There was to be an act of the court before the judgment was interest-bearing. It might be error not to give it, but the judgment did not give it unless so entered. All must agree, further, that in actions of tort a judgment did not bear interest. Such indeed is the postulate of the proposition that the act of 1870 repealed the common law. All must further agree that, as to decrees in equity, they never did bear interest, unless so directed in the exercise of the discretion of the Chancellor.

Perkins vs. *Fourniquet;*
Hammond vs. *Hammond*, supra.

All these things must be conceded, and yet the argument is that the contrary was understood by the legislature to exist, and was directed by the statute to "continue" to exist.

It need only be added that a theory of construc-

tion which would subject decrees in equity to an iron rule in respect of interest instead of being governed by the judgment and discretion of the court is to be avoided.

It thus seems apparent that the common law was not repealed by the act of 1870.

The opinion conceives that some support or countenance is given to the proposition that judgments in tort bear interest by the rules of the court. The fact is exactly the opposite. The earliest rules, those of 1869, prescribe the forms of the verdict and judgment in all cases as follows:

"VERDICT.

"Rule 57. A general verdict shall be recorded thus: "On their oath say they did issue aforesaid in favor of the plaintiff, and that the money paid to him by the defendant, by reason of the premises, is the sum of $, besides costs." If the action be founded on contract, the verdict shall proceed, "with lawfull interest from the day of , 18 , besides costs. (2 Sts., 756, c. 106, s. 61.")

"JUDGMENT.

"Rule 72. Whatever the cause of action may be, if the judgment be for the recovery of money it shall be awarded generally, without any distinction of debt from damages, thus: "It is considered that the plaintiff recover against the defendant, $ (with interest as aforesaid), being the money payable by him to the plaintiff, by reason of the premises, and $ for his costs of suit, and that he have execution thereof."

These rules in *ipsissimis verbis* continue to the present hour.

In 1875 and again in 1886, the rules were revised. The above rules are as numbered in the first revision 57 and 70, and in the last 51 and 67.

It will be observed that these rules are in exact conformity with the act of 1812.

The interest in all cases founded in contract is found by the jury, and the line is unmistakably drawn between contract and tort, the verdict in cases of tort not giving interest *eo nomine*, but including it when given in the discretion of the jury in the damages assessed.

The judgment is made to follow the verdict. When interest is given by the verdict in cases of contract, the judgment is for interest in terms according to the verdict, and there is no such thing recognized as the anomaly of interest by force of law as enacted by the act of 1842.

And more than this. The form of the judgment as prescribed discriminates between contract and tort and, indeed, between cases of contract where interest is given and where it is not.

There is an error in rule 67 as stated in the opinion, doubtless a misprint, and to prevent misapprehension the rule is given:

> "Whatever the cause of action may be, if the judgment be for the recovery of money, it shall be awarded generally without any distinction of debt from damages—thus: 'It is considered that the plaintiff recover against the defendant $ [with interest as aforesaid] being the money payable by him to the plaintiff by reason of the premises, and $ for his costs of suit, and that he have execution thereof.'"

Now can any one, noting the part in brackets, read this rule in connection with the above rule as to verdicts, and assert that all judgments in this District, including those in tort, carry interest by force of law, or even that all judgments in contract carry interest? On the contrary, does not the form declare in substance that there are judgments which do not carry interest, and, indeed, that such as carry it do so by reason of the verdict to that effect?

Indeed, strictly speaking, the interest is in no case upon the judgment *per se*, but upon verdict and judgment, and "the commercial spirit of modern times, which has converted the judgments of courts into interest bearing liens," to use the language of Chief Justice ~~Bristol~~ Bartol in *Railway* v *Sewell*, *supra* p. 456, finds no expression in the law of this District.

A word as to the decisions of the court below. They are four in number, not including the present case.

The *District* v *R. R. Co.*, 1 Mackey, 327. This case, it is evident, has no application. The question of interest did not, and could not arise. The defendant was estopped by the judgment against the District.

The *Fifth Baptist Church* v *R. R. Co.*, 2 Mackey, 458 and *R. R. Co.* v *Hetzel*, 3 Mackey, 501.

These were cases, under mandates from this Court. In both, the court held that the question of interest was not before it, having been adjudicated with sufficient centainty by this Court. The only question before the court below was the construction of the mandates, and the court so held; but one of the justices, Mr. Justice Hagner, "speaking for himself

alone," p. 463, expressed the same views as are set forth in the opinion filed in the present case.

The last case is *Hellen* vs. *R. R.*, 4 Mackey, 419, (1885). The justices who sat were Chief Justice CARTTER and Justice MERRICK. The judgment had here been *entered "with interest from date of rendition."* The Chief Justice delivered the opinion, which embraces ~~these~~ three lines; and holds "that judgments founded in tort like those based in actions *ex-contractu* bear interest in this jurisdicton from the date of rendition." The Trook case was not cited, and the cases of Gannon and of *Keller* vs. *Ashford* had not been decided. The opinion, short as it is, contains the remarkable mistake that judgments, in cases *ex-contractu*, bear interest *from the date of rendition.* Mr. Justice MERRICK, who had long practiced in Maryland, was doubtless led into error by the change in the law of that State, as shown above.

In conclusion, it is submitted—

First: That the question of interest was determined by this Court, and the only matter open below was the construction of the mandate certifying the judgment of this Court.

Second: That the court below, instead of construing the judgment of this Court, has proceeded to hear and determine, *de novo*, a question involved in such judgment, and adjudicated by it, and has decided that question, not according to the mandate, but according to its own opinion of the law.

Third: That such opinion is erroneous, and the reasons assigned wholly insufficient.

And hence, that the writ of mandamus should issue.

W. D. DAVIDGE,
ENOCH TOTTEN,
Counsel for Petitioner.

Office Supreme Court U. S.
FILED,
JAN 19 1891
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

EX PARTE THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY, PETITIONER.

Brief in Opposition to the Prayer of said Petitioner for a Writ of Mandamus.

W. A. COOK,
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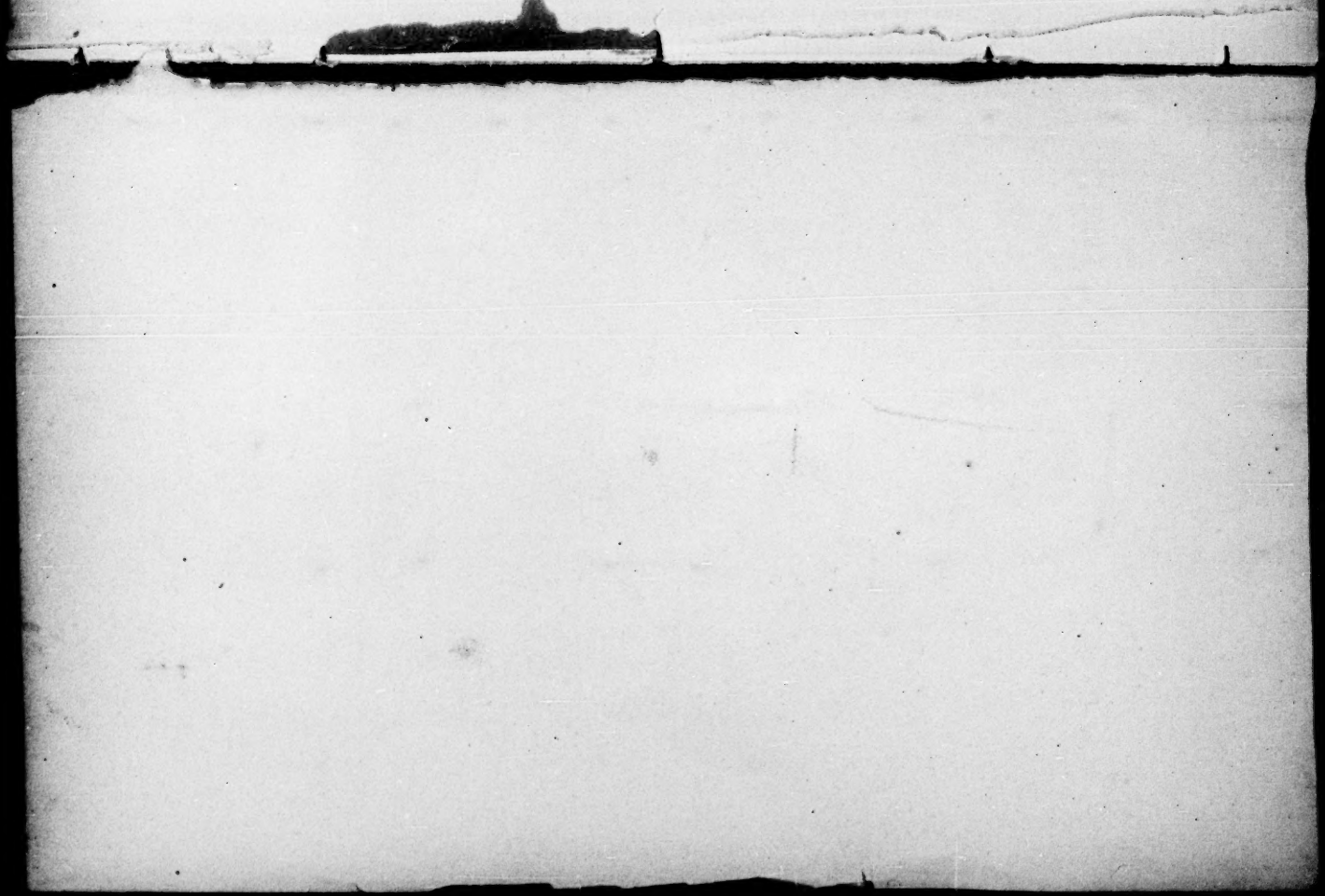
LAW REPORTER PRINT.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

EX PARTE THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY, PETITIONER.

Brief in Opposition to the Prayer of said Petitioner for a Writ of Mandamus.

The questions presented by the petition and return arise in the following manner:

At the last term of this court the judgment of the Supreme Court of the District of Columbia in the case of Lewis H. McDade *vs.* The Washington and Georgetown Railroad Company was affirmed.

135 U. S., 554.

The judgment was rendered by the special term of said court below in favor of McDade against the Railroad Company in a special action on the case for negligence resulting in personal injury to the plaintiff. (See petition, p. 3.) The judgment was affirmed by the General Term of the court below (see petition, p. 4), and was also affirmed by this court. (See petition, p. 9.) Neither judgment contains anything in relation to the question of interest, nor was that question directly or distinctively before this court in said case.

The Supreme Court of the District of Columbia, upon receipt of the mandate of this court affirming the judgment and directing execution, entered an order awarding execution for the amount of the judgment, with interest from the date of its entry at the special term until paid, and costs. (See petition, pp. 10 and 11.) Thereupon the petition in question was presented by the Railroad Company for a writ of mandamus on the justices of the court below, requiring them to reverse so much of said order for execution as allows interest on the judgment. A rule to show cause was allowed, and in response thereto the said justices have made a return, stating fully the grounds and reasons for their action.

THE QUESTIONS ARISING UPON THE PETITION AND RETURN ARE—

1. CAN THE SAID ACTION OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA BE REVIEWED UPON A WRIT OF MANDAMUS?

2. IF SO, IS THERE ANY ERROR IN THE ACTION OF THAT COURT?

FIRST.

CAN THE ACTION COMPLAINED OF BE REVIEWED UPON MANDAMUS?

The answer to this question depends upon whether the order complained of was the exercise of a ministerial act, or a judicial function, by the court below. If it was the former, it was reviewable. If the latter, it is not.

Ex parte Newman, 14 Wall., 165.
Ex parte Railroad Co., 101 U. S., 720.

Where an inferior court is acting in execution of a mandate of this court, it acts ministerially as to all matters which have been adjudicated by this court and directed by

the mandate to be carried into execution: but as to all other matters necessary and proper to be done and considered in order to make a final disposition of the case, or a complete execution of the judgment, it acts judicially. And if the mandate is not certain and specific upon its face, as to what matters were adjudicated by this court, the court below may and should resort to the opinion of this court for certainty in that regard.

Mackall *vs.* Richards, 116 U. S., 47.

Ex parte Railroad Company, 101 U. S., 720.

Ex parte French, 91 U. S., 423.

White's Administrator *vs.* U. S., 1 Black., 501.

Sibbald *vs.* U. S., 12 Pet., 488.

West v. Brashear, 14 Pet. 51

In *Ex parte* Newman it is said that "the only office of the writ when issued to a subordinate court is to direct the performance of a ministerial act or to command the court to act in a case where the court has jurisdiction and refuses to act." (14 Wall., 165.) And in the same case, at page 168, it is said, "mandamus will not lie, it is true, where the party may have an appeal or writ of error, *but it is equally true that it will not lie in many other cases where the parties are without remedy by appeal or writ of error.* Such remedies are not given save in patent and revenue cases, except where the sum or value exceeds two thousand dollars."

In *Ex parte* Railway Company, where application was made to this court for a mandamus to compel a circuit court to execute a mandate in a particular manner, this court said:

"We recognize, in its fullest extent, the power of this court by *mandamus* to enforce prompt compliance with its mandates, but it is not consistent with the principles and usages of law that we should, in that summary mode, revise the action of inferior courts, as to any matters about which they must or may exercise judicial discretion. 'The writ has never been extended so far, nor ever used to control the discretion and judgment of an inferior court of record acting within the scope of its judicial authority.'"

101 U. S., p. 720.

And in *Ex parte* Sibbald *vs.* U. S., this language upon the same subject is used:

"When the Supreme Court have executed their power in a cause before them, and their final decree or judgment requires some further act to be done, it cannot issue an execution, but shall send a special mandate to the court below, to award it. (Sec. 24, Judiciary Act, 1 Story's Laws, 61.) Whatever was before the court, and is disposed of, is considered as finally settled. The inferior court is bound by the decree as the law of the case, and must carry it into execution, according to the mandate.

"They cannot vary it or examine it for any other purpose than execution, or give any other or further relief, or review it upon any matter decided on appeal for error apparent, or intermeddle with it, *further than to settle so much as has been remanded.*"

12 Pet., 492.

The question, then, whether the allowance of interest by the court below was judicial action, or the failure to act ministerially in execution of the mandate, depends upon whether the question of interest was adjudicated by the mandate or opinion of this court. It cannot and will not be contended that this court passed upon the question of interest, and if it is to be considered as adjudicated by the mandate it must be by virtue of its *silence* upon that subject, which would only be the case had it been in the *discretion* of this court to allow interest. Since the passage of the Act of 1842, upon which the 23d rule of this court is based, it has not been in the discretion of the court to disallow interest upon such judgments as are therein mentioned. Whether that act was in force in the District of Columbia, and whether the laws in force in said District authorized or required interest to be allowed on said judgment were questions open for consideration by the court below, by the express words of said mandate, which commanded "*that such execution and proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had.*" The

whole question of execution was remitted to the court below, which necessarily includes the question of interest and costs.

Perkins *vs.* Fourniquet, 14 How., 331.
Ex parte Many, *Id.*, 24.
Ex parte Flippin, 94 U. S., 350.
Young *vs.* Godbe, 15 Wall., 562.

The mandates from this court affirming judgments usually contain the provision of Rule 23 in relation to interest. As is shown by the opinion of the learned justice of the court below, made a part of the return in this cause, this custom has generally been followed in mandates sent to the Supreme Court of the District of Columbia.

No reason appears why that provision was not inserted in the mandate in this case. It may have been an inadvertence on the part of the clerk. It certainly is not material that it should be inserted in the mandate. The rule is as much a mandate to the court below as if its provisions were inserted in it, and the only thing left for the court below to do under the rule and mandate was to ascertain the rate of interest.

In speaking of the question whether the judgment of a circuit court bears interest, and is to be levied upon execution as part of the judgment, this court said in Perkins *vs.* Fourniquet that—

"The Act of 1842 does not embrace cases in equity, nor does it extend to either judgments or decrees in this court. It is confined, in plain terms, to judgments at law in the circuit and district courts.

"It places the judgments of these courts, in respect to interest, upon the same footing with the judgments of the State courts. And where, by the law of the State the judgment of a court carries a certain interest until paid, the former rule and the same rate of interest is to be allowed in the circuit and district courts of the United States, and the marshal is directed to levy it on process of execution where-

ever it can be so levied on a judgment in the State court. *In such cases the judgment bears interest by force of the law, although upon the face of it it may not purport to carry interest.* Upon common law principles a judgment does not carry interest. It is true that damages may be recovered for the detention of the debt in an action on the judgment. But previous to the Act of 1842 neither interest nor damages for the detention of the debt could have been levied under process of execution upon the judgment of a circuit or district court of the United States."

14 How., 331.

In the case of *Ex parte* Many the judgment of the circuit court affirmed by this court left the amount of costs blank, and motion was made by plaintiff in the circuit court to tax the costs while it was proceeding under the mandate, and the motion was denied. Upon application here for a mandamus to compel the court below to allow costs, this court said:

"The court refused to allow the amendment to be made, and overruled the motion. And we think its judgment, whether it be correct or not, cannot be revised in the form of proceeding moved for on behalf of the plaintiff. The decision of the circuit court was not a mere ministerial act. It was the decision of a court of competent jurisdiction made in the exercise of judicial authority and discretion. This court might unquestionably issue a *mandamus* to the court below to proceed to judgment. But in this case the court has proceeded to judgment upon the question submitted for its decision. And whether that judgment be erroneous or not this court has not jurisdiction to re-examine it in a proceeding by *mandamus*."

14 How., p. 25.

In *Ex parte* Flippin, where application was made to this court for a mandamus to the circuit court, to control its action in relation to the execution of a judgment, it was held as follows:

"The writ of which the petitioners complained was one of execution to carry into effect the judgment in the origi-

nal suit for the *mandamus*. 'The jurisdiction of a court is not exhausted by the rendition of its judgment, but continues until the judgment is satisfied.'

"Nayman *vs.* Southard, 10 Wheat., 23.

"Process subsequent to judgment is as essential to jurisdiction as process anterior to judgment, else the judicial power would be incomplete and entirely inadequate to the purposes for which it was conferred by the Constitution.

"Riggs *vs.* Johnson County, 6 Wall., 187.

"But if the court has jurisdiction to issue process, it has necessarily jurisdiction to decide as to its appropriate form.

"Here the process has been issued; and the court, upon motion, has decided that it was good in form, and ought not to be quashed. Of this decision the petitioners complain and seek to have it reversed.

"This we cannot do by *mandamus*. Under that form of proceeding we may compel an inferior court to decide upon a matter within its jurisdiction and pending before it for judicial determination, but we cannot control its decision.

"Neither can we in that way compel the inferior court to reverse a decision which it has made in the exercise of its legitimate jurisdiction. That is the office of a writ of error or an appeal, in cases to which such proceeding applies, but not of a writ of *mandamus*."

94 U. S., 350.

SECOND.

IS THERE ANY ERROR IN THE ACTION OF THE COURT BELOW?

By virtue of the statutes in force in the District of Columbia the judgment in question bears interest from the date of its rendition until paid.

The question whether, under these statutes a judgment *in an action of tort* bears interest from the date of the judgment is exhaustively discussed, and the affirmative thereof conclusively established by the opinion of the General

Term of the court below, rendered in this case by Mr. Justice Hagner, which opinion is made a part of the return to the rule awarded by this court in this case.

In that opinion reference is made to the contemporaneous construction of Congress and the executive officers of the District of Columbia in providing for and paying interest on judgments rendered against the District in actions of tort.

The opinion of this court in Gannon's Case shows that there was no reference to interest in that case in the judgment of the special or General Term of the Supreme Court of the District.

130 U. S., 127.

As the judgment was not affirmed here, but the writ of error dismissed, Rule 23 does not apply and there was nothing in the mandate of this court upon the question of interest. Neither the able counsel who represented the District in that case, nor the Commissioners of the District, nor Congress understood the opinion of this court in that case to hold, as is now contended, that such judgments did not bear interest, for in the act appropriating money for the payment of that and several other similar judgments, after making appropriation to pay the principal and costs severally to the plaintiffs, the act proceeds "together with a further sum to pay the *interest on said judgments, as provided by law, from the date the same became due until date of payment.*" (See Acts of Fifty-first Cong., 1st Sess., p. 37.) And on page 514, of the acts of the same session, will be found an appropriation in like language for the payment of the judgment in the case of Woodbury *vs.* The District (an action in tort,) affirmed in this court at the same term as the McDade judgment, and remanded under a like mandate. Under these appropriations interest was paid upon these judgments from date of rendition until paid.

It accordingly appears that by the contemporaneous con-

struction of those charged with the execution of the laws in the District, as well as of Congress, judgments of the Supreme Court of the District, in actions of tort as well as in actions *ex contractu*, bear interest from the date of rendition.

It seems, however, irrespective of all this, that an express reference or requirement in the mandate in relation to interest was unnecessary.

By the words in the mandate "that such execution and proceedings be had in said cause as according to right and justice and the law of the United States ought to be had," the payment of interest is clearly implied, for manifestly such payment is both right and just. Otherwise, in this and all similar cases of tort, a writ of error could be taken and payment be indefinitely delayed after the obtaining of a judgment. Moreover, as the law as it now exists provides for the payment of interest, and the mandate directs a proceeding according to law, such payment is necessarily implied, and the use of the term interest in the mandate was unnecessary and would have been mere surplusage or tautology.

Should it seem to the court that the form of the mandate in this case is such as to remove the question of interest from the judgment of the court below, inasmuch as it appears from the opinion of this court in this case that the question of interest was not directly adjudicated by it, and that the mandate is not in accordance with the judgment of the court, it should be recalled and another directed to issue in the usual form and in accordance with Rule No. 23.

Ex Parte Sibbald v. U.S. 12 Pet. 496

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Office Supreme Court U. S.
FILED,
FEB 26 1891
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States,

October 5, 1890. No. 8.—Original.

Ex Parte WASHINGTON & GEORGETOWN RAILROAD COMPANY.

Additional Brief in opposition to the motion.

A. L. MERRIMAN,
Attorney for L. H. McDade.

IN THE

Supreme Court of the United States,

October 5, 1890. No. 8.—Original.

Ex Parte WASHINGTON & GEORGETOWN RAILROAD COMPANY.

Additional Brief in opposition to the motion.

The respondent, the Supreme Court of the District of Columbia in its return to the rule to show cause, attaches thereto its opinion delivered on the motions in the case in controversy and another case to "direct the clerk to enter the judgments on the mandates from the Supreme Court with interest thereon."

The order or judgment of the Court entered on this motion, after argument of counsel as stated in the petition, is contained on page 11 of the petition; which order after reciting the mandate ordered that the plaintiff have execution of his judgment with interest from the date of the judgment until paid.

This proceeding is in conformity with the settled practice of the Court. In Cochrane vs. Schell, 107 U.S. Rep., 625, this Court says: "When the mandate goes to the court below, it is necessary that that court, with a view to execution should enter a further judgment in accordance with the mandate."

The judgment or order so rendered is a final judgment, and may be prosecuted to this Court as in other cases of final judgment. Perkins vs. Fournegust, 14 How., 328.

That being so, the remedy by mandamus will not lie and I refer to the authorities quoted by my colleagues. Furthermore, this Court in Bayard, secretary &c. vs. the United States, *ex rel*, White, 127 U. S., 246, quoting Knox Co., vs. Aspinwall, 24 How., 377-383 say: "That the writ of mandamus is a remedy to compel the performance of a duty required by law, when the party seeking it has no other remedy, and the duty sought to be enforced is ~~shown~~ and indisputable. Both requisites must concur in every case."

Nor will the writ of mandamus lie where by reason of the small amount of the judgment the Court has no jurisdiction in a case brought up by writ of error. *In re* Burdette, 127 U. S., 771.

So that, even if, as contended, the court below erred in making the final order upon receipt of the mandate, the remedy is not by writ of mandamus for reasons stated.

It is submitted however that the court below committed no error in the premises.

The contention on the part of the petitioner is 1st that under the laws of the District of Columbia judgments founded upon torts do not carry interest, and 2d that under the rules of this court, in the case of a judgment of affirmance, when the judgment of this court is silent upon the question of interest, such silence is equivalent to a denial thereof. Interest is the term used in law for the use of money withheld, and is collectable as damages for the detention thereof, whenever the amount is liquidated either by the parties, or

by process of law and the rate of interest or damages are fixed by statute of each State, and by Congress in the territories subject to its jurisdiction; and it matters not in the case of a judgment, of what the original demand consisted. When reduced to a judgment, the demand becomes a debt of the highest character, and whether or not under the law where rendered, execution may issue for the judgment and interest, yet in case of delay in payment suit might be instituted thereon, and interest by way of damages for such detention is recoverable. This subject is fully discussed and authorities collative by Judge Cowan in Klock *vs.* Robinson, 22 Wend, 157. In accord with this principle this court under authority of the judiciary act of 1789, adopted in 1803 rule 18 providing that in contraverted cases, interest on judgments affirmed should be computive as damages for delay at the rate of six per cent. No distinction was made as to the nature of the suits in which the judgment was rendered. The case of Mitchell *vs.* Harmony, 13 How. 115, cited, to which this rate was applied was an action founded on a tort. In 1842, Congress passed the act (Sec. 966 Rev. Stat.) enacting that judgments in Circuit or District Courts of the United States should draw interest according to the laws of the State where rendered. In this also there is no distinction as to the nature of the suit in which the judgment was rendered.

It is contended by petitioners that the act of 1842 is limited to the specific courts named and does not apply to the courts of the District of Columbia. The Supreme Court of the District of Columbia is a court of the United States (Embry vs. Palmer, 107 U. S. Rep. 3); it is a Federal Court and bears like relations to the judicial system of the United States, with like jurisdic-

tion as the Circuit and District Courts, Congress in enacting the law legislated for the entire United States, and it cannot be presumed that it intended to exclude from its operation any portion thereof. The term used is a general one—"Circuit or District Courts," and may properly include all courts of the United States having general jurisdiction. This view is still further strengthened by the order of this Court of like tenor with the act fixing the rate of interest on judgments affirmed by the Court. The only local laws relating to interest on judgments are, 1st, the act of 1812 (sec. 829 Rev. Stat.), which regulates the trial of causes on the common law side of the Court in actions of contracts, and authorizes the jury to fix the amount due and the time from which interest shall be paid. 2nd, the act of 1870 (sec. 713, Rev. Stat.), which provides that the rate of interest upon judgments and decrees shall continue to be six dollars upon $100 for one year, &c."

The act of 1870 repealed no prior acts, and therefore in the revision of the Statutes in 1873, the three acts were incorporated into the Statutes as revised and are laws still in force and must be construed and treated as such, and made to harmonize.

The argument on part of petitioner is that the act of 1812 is not applicable to this case (which is true); and that the act of 1870 only continues in force the then existing law; in other words that the act is in effect, nugatory. It must be conceded that Congress in the passage of an act means something by it, either by way of new enactment, or as explanatory of some prior law. The only law there existing relative to the subject matter was the act of 1842, and if that act was not comprehensive enough to include the District of Columbia, as being within the judicial system of the United States,

then the latter act must be interpreted as r
tion, and interest allowed upon all ~~payments~~
as stated in the act. In this act likewise no
is made as to the nature of the action in w
ment was rendered.

The effect of a judgment of this Court simply affirming the judgment of the court below, and without reference to the acts of Congress, is to be determined by the rules of the Court adopted under the authority of the judiciary act.

Rule 23, which is substantially the same as rule 62 of 1852, provides, clause 1, that on the affirmance of a judgment in this Court "interest shall be *calculated* and *levied* from the date of the judgment below until the same is paid &c." Clause 2, of the rule provides, "that where the writ of error appears to have been sued out for delay certain damages may be *awarded.* Clause 4, reads "In cases in admiralty, interest shall not be allowed unless specially directed by the Court."

The distinction in the several clauses of the rule is obvious. Under cases coming within clause 1, interest is to be "calculated and levied," and as a matter of course follows the judgment of affirmance, and under the authority of Cochrane vs. Schell, *supra* may be the basis of the proceeding in the lower court calculating and levying such interest in accordance with the laws of the State where rendered.

In the cases arising under clauses 2 and 4 the action and judgment of the court is necessary in the one case to "award" damages, and in the other to declare interest to be paid.

A. L. MERRIMAN,
Attorney for L. H. McDade.

Office Supreme Court U. S.
FILED,
MAR 19 1891
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States

OCTOBER TERM, 1890.

No. 8. ORIGINAL.

EX PARTE: IN THE MATTER OF THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY.

APPENDIX TO BRIEF in Opposition to Prayer for a Writ of Mandamus, containing the Sections of the Statutes referred to in Opinion of the Court Below and Briefs.

I.

Sections of the Revised Statutes of the United States for the District of Columbia, relating to interest.

(Act of April 22, 1870.)

SECTION 713. The rate of interest upon judgments or decrees, and upon the loan or forbearance of any money, goods, or things in action, shall continue to be six dollars upon one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time, except as provided in this chapter.

(Act of June 12, 1812.)

SECTION 829. Upon all judgments rendered on the common-law side of the court in actions founded on contracts, interterest at the rate of six per centum per annum shall be awarded on the principal sum due until the judgment shall be satisfied, and the amount which is to bear interest and the time from which it is to be paid shall be ascertained by the verdict of the jury sworn in the cause.

(Relating to the justices of the peace.)

SECTION 997. Justices of the peace shall have jurisdiction in all civil cases where the amount claimed to be due for debt or damages arising out of contracts, express or implied, or damages for wrongs or injuries to persons or property, does not exceed one hundred dollars, except in cases involving the title to real estate, actions to recover damages for assault, or assault and battery, or for malicious prosecution, or actions against justices of the peace or other officers for misconduct in office, or in actions for slander, verbal or written.

(Relating to judgments rendered by justices of the peace.)

SECTION 1007. Judgments shall bear interest from their date until paid or satisfied.

II.

Section 966 of the Revised Statutes of the United States.

SECTION 966. Interest shall be allowed on all judgments in civil causes, recovered in a circuit or district court, and may be levied by the marshal under process of execution issued thereon, in all cases where, by the law of the State in which such court is held, interest may be levied under process of execution on judgments recovered in the courts of such State; and it shall be calculated from the date of the judgment, at such rate as is allowed by law on judgments recovered in the courts of such State.

III.

The following sections of the Revised Statutes of the United States relating to the District of Columbia, indicate that the language of Section 966 of the General Statutes includes judgments of the Supreme Court of the District of Columbia, viz:

SECTION 92. The laws of the State of Maryland not inconsistent with this title, as the same existed on the twenty-seventh day of February, eighteen hundred and one, except as since modified or repealed by Congress or by authority thereof, or until so modified or repealed, continue in force within the District.

SECTION 93. The Constitution and all the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the District as elsewhere within the United States.

SECTION 753. The several general terms and special terms of the circuit courts, district courts, and criminal courts authorized by law, are declared to be, severally, terms of the Supreme Court of the District of Columbia; and the judgments, decrees, sentences, orders, proceedings, and acts of the general terms, special terms, circuit courts, district courts, and criminal courts rendered, made, or had, are and shall be deemed judgments, decrees, sentences, orders, proceedings, and acts of the Supreme Court; but nothing contained in this section shall affect the right of appeal as provided by law.

SECTION 758. The special term held as the United States district court for the District of Columbia shall be holden on the first Mondays in December and June in every year.

SECTION 760. The Supreme Court shall possess the same powers and exercise the same jurisdiction as the circuit courts of the United States.

SECTION 761. The justices of the Supreme Court shall severally possess the powers and exercise the jurisdiction possessed and exercised by the judges of circuit courts.

SECTION 762. Any one of the justices may hold a special term, with the same powers and jurisdiction possessed and exercised by district courts of the United States.

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THE LAW REPORTER PRINT